IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE NINETEENTH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE SRI BILAL NAZKI

THE ACTING CHIEF JUSTICE

and
THE HON'BLE SRI JUSTICE G.CHANDRAIAH

WRIT PETITION No. 8496 of 2005

Between:

Mohd. Jabeer Ahmed, S/o. M.A. Raheem,
Chairperson of Bhainsa Municipality, R/o. Bhainsa, Adilabad District.

..... PETITIONER

AND

The District Collector, Adilabad, A.P.

.....RESPONDENT

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an order, direction or writ, more in nature of WRIT OF MANDAMUS declaring the order passed by the respondent herein in proceeding No. D-5/469/2005 dated 03-4-2005 as illegal and null void and without jurisdiction and against the public interest and consequently direct the respondent not to stop the work of community hall that is being constructed by the Bhainsa Municipality and to pass such other or further orders as deem fit and proper in the circumstances of the case.

Counsel for the Petitioner: Mr. K.MANIK PRABHU

Counsel for the Respondent: GP FOR REVENUE

The Court made the following :

ORAL ORDER:

(per Honourable Sri Bilal Nazki, the Acting Chief Justice)

The grievance of the petitioner when the Writ Petition was filed was that the Commissioner, Bhainsa was directed to stop the activity of proposed construction of Function Hall in open place of old Municipal Office. This writ petition was entertained. Thereafter, it was brought to our notice that the Collector has passed another order, which was taken on record dated: 17.4.2005 allowing the Municipality to construct the Community Hall, but, imposing certain conditions. The conditions imposed were:

1. The Municipality should allow the school authorities to run primary session in this community hall on all working days so that the shift system can be removed; and
2. The community hall should be utilized for functions and other programmes on the holidays only.

When this order was brought to our notice, we allowed the petitioner to go on with the construction as the Collector had allowed the construction of the community hall only if the conditions referred to above have been accepted by the Municipality. By communication dated: 17.4.2005, the Municipality was asked to give its consent. On the last occasion, when this case came up, we had specifically asked the learned Government Pleader to show us as to what was the authority for the Collector to pass such an order. We have not been shown any law, by which, any authority could be attributed to the District Collector to pass an order of the nature of the order dated: 17.4.2005. Admittedly, the land on which the construction is going on belongs to the Municipality and the Municipality is constructing a community hall for the welfare of the community from the funds of the Municipality. Therefore, they cannot be forced to run a school in that community hall. It is for the Municipality to decide as to, to what legal use the community hall would be put to. In these circumstances, we allow the writ petition, set aside the orders dated: 3.4.2005 and 17.4.2005 passed by the Collector. The petitioner is at liberty to use the Hall in accordance with the law for any legal purpose it wants without causing inconvenience to anybody.

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BILAL NAZKI, ACJ.

19.4.2005

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G.CHANDRAIAH, J.

VR.

To

1. The District Collector, Adilabad, A.P.

2. Two CCs to Government Pleader for Revenue, High Court Buildings, Hyderabad (OUT).

3. Two CD copies.